

Pursuant to the authority vested in the Cannabis Control Board by Sections 13, 81, and 86 of the Cannabis Law, Parts 128 and 129 of Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

**Section 128.1 is repealed and a new Section 128.1 is amended to read as follows:**

**§ 128.1 Definitions.**

For purposes of Part 128 and Part 129 of this Title, the following terms shall have the following meanings:

- (a) *Advertise or advertising* means the process of disseminating advertisements in any manner or by any means.
  
- (b) *Advertisement* means any publication, video, use of a brand representative, or any other form of media for the purpose of causing, directly or indirectly, the purchase or use of a brand or cannabis product. Advertisements include, but are not limited to: websites, social media, print media, broadcast media, TV, radio, streaming media, out of home media, merchandise, discounts, coupons, points-based reward systems, customer loyalty programs or “buy-one-get-one” offers, event sponsorship, brand representatives, street art, murals, and electronic communications. Except that advertisement does not include billboards or outdoor signs pursuant to sections 129.3 and 129.4, unless otherwise specified in Parts 128 or 129.
  
- (c) *Attractive to individuals under twenty-one* means a cannabis product’s label, package,

advertisement, advertising, and marketing that is pleasing or appealing to persons under the age of twenty-one by using or including, among other things:

- (1) Cartoons or mascots;
- (2) Similarities to products, or words that refer to products that are commonly associated with, or marketed in a manner so as to be attractive to, individuals under twenty-one, including but not limited to, any imitation of food, candy, soda, drinks, cookies, or cereal (with the exception of using the name of a cultivar), in labeling, packaging, advertising, or marketing;
- (3) Terms “candy” or “candies” or variants in spelling such as “kandy” or “kandeez” (with the exception of cultivar names);
- (4) Symbols, images, characters, public figures, phrases, toys, or games that are commonly used to market products to individuals under the age of twenty-one;
- (5) Images of individuals who could reasonably appear to be under the age of twenty-one, unless the individual is at least twenty-five years of age; or
- (6) Audio that may be attractive to individuals under twenty-one, including but not limited to using children’s voices or cartoon voices.

(d) *Board* means the Cannabis Control Board of New York State as established by Article 2 of the Cannabis Law.

(e) *Brand or Branding* means the name, entity name, or doing business as name, registered trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other identifiable marker that identifies one adult-use cannabis licensee or adult-use cannabis licensee's cannabis products and any cannabis products or services as distinct from those cannabis products or services of other adult-use cannabis licensees and is used in, among other things, any packaging, labeling, advertisement, advertising or marketing.

(f) *Brand representative* means any individual compensated or directed by a licensee who acts with the intention of causing, directly or indirectly, the purchase or use of a specific brand or cannabis product.

(g) *Certificate of analysis* means a certified report from a cannabis laboratory that meets the requirements of Part 130 of this Title.

(h) *Child-resistant* means special packaging for sale to a consumer that is:

(1) designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly as defined by Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.15 for Poison Prevention Packaging Standards and Title 16, as it relates to Commercial Practices, of the Codes

of Federal Regulations section 1700.20 for Testing Procedure for Special Packaging, as amended from time to time, and

(2) follows the packaging standards set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations Section 1700.15 and the testing procedure set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.20.

(i) *Date of expiration* means the date prior to which an unopened cannabis product meets applicable standards of identity, potency, and quality at the time of use, as determined by appropriate data, subject to any storage conditions stated on the labeling.

(j) *Edible* means a product, containing either cannabis or concentrated cannabis and other ingredients, intended for use or consumption through ingestion, including sublingual or oral absorption.

(k) *Exit package* means a receptacle into which cannabis products within a retail package are placed at the retail point of sale. The exit package is optional.

(l) *Health claim* means any claim on the retail package or marketing layer or in the marketing or advertising of a cannabis product, that expressly or by implication, including, but not limited to, by "third party" references, written statements (e.g., a brand name including a term such as "heart"), symbols (e.g., a heart symbol), or branding, characterizes the relationship of any cannabis product to a disease or health-related condition or symptom. Implied health claims include those statements, symbols, branding, advertisements, or other forms of communication

that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the cannabis product to a disease or health-related condition or symptom.

(m) *Licensee* means an individual or an entity who has been granted a license or registration for any activity under Article 3 or Article 4 of the Cannabis Law.

(n) *Lot unique identifier or lot number or bar code* means any distinctive combination of letters, numbers, or symbols, or any combination of them, from which the complete history of cultivation, manufacturing, processing, testing, custody, distribution or recall of a lot of cannabis or a cannabis product can be determined.

(o) *Marketing* means the process of identifying consumers' needs and addressing such needs through advertisements.

(p) *Marketing layer* means packaging in addition to the retail packaging that is the outermost layer visible to the consumer at the point of sale. The marketing layer is optional, but if used it shall be labeled according to the requirements in this Part.

(q) *Net quantity* means the total net weight or net volume of the cannabis product minus the weight of its packaging and expressed in—at a minimum—metric units, as follows:

(1) if the product is a solid, semi-solid, or viscous product—including but not limited to whole cannabis flower—the net weight shall be expressed in grams, or milligrams for weights under one gram;

(2) if the product is a pre-roll, the net weight of the finished pre-roll, shall include the entire product including, but not limited to, the dried cannabis, the rolling paper, and the filter or tip and be expressed in grams, or milligrams for weights under one gram;

(3) if the product is in liquid form, the net volume shall be expressed in milliliters; and

(4) if the product is a vaporization cartridge or single-use pen, the net weight of the cannabis oil or concentrate shall be prior to that oil or concentrate's placement in the vaporizer, cartridge, pen, pod, or other device and expressed in grams.

(r) *Non-consumer package* means any container or wrapping used solely for the transport of cannabis or cannabis products in bulk between licensees and, particularly, a package intended solely for wholesale distribution and not final retail sale.

(s) *Office* means the Office of Cannabis Management as established by Article 2 of the Cannabis Law.

(t) *Phytocannabinoid* means any of the chemical compounds, excluding terpenes or any other compounds set forth by the Office, that are the active principles of *Cannabis sativa*, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD), and does not include

synthetic cannabinoids as that term is defined in subdivision (g) of schedule I of section thirty-three hundred six of the Public Health Law.

(u) *Plastic* means a synthetic material that is made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal.

(v) *Post-consumer recycled content* means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. It does not include post-industrial material, or material generated by means of combustion, incineration, pyrolysis, gasification, solvolysis, chemical recycling, and any high-heat or conversion process.

(w) *Principal packaging display panel* means the panel of the retail package or the marketing layer that the processor intends to be displayed at retail.

(x) *Resealable* means a package that maintains its child-resistant effectiveness, as well as preserving the integrity of cannabis products contained within, for multiple servings.

(y) *Retail package or retail packaging* means a sealed, hard or soft-bodied, child-resistant receptacle in which the cannabis product shall be placed before distribution for retail sale. Retail package does not mean: (1) inner wrapping or lining; (2) an exit package; or (3) a non-consumer package used to transfer cannabis from one licensee to another.

(z) *Reusable packaging* is packaging made from durable material that is designed to be used repeatedly for a number of use cycles, is safe for washing and sanitizing, and is capable of being recycled at the end of use, with the exception of ceramic products.

(aa) *Special branding material* means a visual or audio element which shall only be for use in packaging, labeling, marketing, and advertising by certain licensees or on certain cannabis products including, but not limited to, a designation that a licensee is a social and economic equity licensee. All special branding materials and the brands or products authorized to use such materials shall be defined, made available, and designated for use in guidance.

(ab) *Tamper-evident* means, with respect to a device or process, bearing a seal, a label or a marking that makes unauthorized access to or tampering with a package, product, or container easily detectable.

(ac) *Total THC* means the sum of the percentage by weight or volume measurement of tetrahydrocannabinolic acid multiplied by 0.877, plus, the percentage by weight or volume measurement of THC.

(ad) *Universal symbol* means an image developed by the Office, and made available to licensees, that indicates that a retail package or product contains cannabis.

(ae) *Vehicle* means any car, truck, bus, watercraft, aircraft, tractor, e-bike, motorcycle and any other motorized vehicle, including any non-motorized trailer, cart, bicycle, or similar objects.

**Paragraphs (1), (2), (4), and (5) of subdivision (a) of Section 128.2 is amended to read as follows:**

- (1) be child-resistant for the duration of the useful life of the product;
- (2) be tamper-evident in a manner that all required labeling remains unobstructed and conspicuous on the product even after the package has been opened;
- (4) fully enclose the product, minimize oxygen exposure, and prevent the contamination and/or degradation of the cannabis product; [and]
- (5) not impart any toxic or deleterious substance onto the cannabis product[.]; and

**New paragraph (6) is added to read as follows:**

- (6) satisfy the minimum standards of this subsection, including the child-resistant requirements, unless otherwise excluded in this Part, if the innermost layer of packaging is located within the retail package, such as a container placed in a retail bag or box.

**Subdivision (c) of Section 128.2 is amended to read as follows:**

- (c) The exit package is optional, is not required to be labeled, and, unless the exit package is a retail advertising specialty, may—at a maximum—only include the retail dispensary’s name, its logo, and any special branding materials, providing such [that ]name or logo complies with the provision of section 128.6 of this Part.

**Paragraph (2) of subdivision (a) of Section 128.3 is repealed and paragraphs (3) through (5) of subdivision (a) of Section 128.3 are renumbered (2) through (4).**

**Paragraph (1) and newly renumbered paragraphs (2) and (3) of subdivision (a) of Section 128.3 are amended to read as follows:**

(1) contain any features that emit scent or create sound;

[~~(2)~~ contain any features that change or alter a package's appearance through technology, other than for anti-counterfeiting purposes;]

~~(2[3])~~ be [~~made~~]attractive to individuals under twenty-one as defined in Section 128.1 of this Part;

~~(3[4])~~ be made of plastic, unless containing a minimum 25% post-consumer recycled content. Documentation of compliance shall be made available to the Office upon request. [; and]

**New subparagraphs (i) and (ii) of newly renumbered paragraph (3) of subdivision (a) of Section 128.3 are added to read as follows:**

(i) These requirements shall not apply to plastics deemed necessary to adhere to child resistance requirements, such as push buttons for cardboard boxes or other mechanisms designed to prevent children from opening containers. This exception also applies to items for which no option that utilizes post-consumer recycled content is available. Proof that the licensee had

conducted its due diligence in examining packaging alternatives, and that the licensee has found no alternative, must be maintained by the licensee and made readily available to the Office upon request.

(ii) New licensees have twelve months to comply with the 25% minimum post-consumer recycled content requirement and must provide evidence of compliance upon the initial license renewal.

**Paragraph (5) of subdivision (a) of Section 128.3 is renumbered (4).**

**Subdivision (a) of Section 128.4 is amended to read as follows:**

(a) A processor, microbusiness, cooperative, RO, ROD, or ROND licensee shall submit an environmental sustainability program for cannabis product packaging as part of the application and licensure process, if applicable for the license type. Such programs may include, but are not limited to, reuse strategies collecting reusable cannabis packaging components to be sanitized and refilled or reused as cannabis packaging or sustainable packaging strategies that use non-plastic, compostable or recyclable materials, or packaging materials exceeding 25% post-consumer recycled content.

(b) \_\_\_\_\_ [Within two years of issuance of the license ]Upon renewal of the license, [the ]a processor, microbusiness, cooperative, RO, ROD, or ROND licensee shall submit to the [Board or ]Office, in a form and manner determined by the Office, an [revised] environmental sustainability product packaging plan that reduces use of plastics in packaging.

**Subdivisions (b) through (d) of Section 128.4 are renumbered (c) through (e).**

**Paragraphs (2) and (3) of newly renumbered subdivision (e) of Section 128.4 is amended as follows:**

(2) the total number of cannabis products sold in reusable packages, and the number of reusable packages that the licensee refilled;

(3) the total cost of packaging material;[ and]

**Paragraph (4) of newly renumbered subdivision (e) of Section 128.4 is renumbered to paragraph (5) and a new paragraph (4) of newly renumbered subdivision (e) of Section 128.4 is added to read as follows:**

(4) for reporting required after June 1, 2024, the material composition of packaging material sold, offered for sale, or distributed into the state by the licensee in the prior calendar year; and

**Subdivision (a) of Section 128.5 is amended to read as follows:**

(a) The principal packaging display panel shall contain the following information:

(1) [in **bold**, ]except for cannabis flower and other forms of cannabis for vaporization which must include the percentage of total THC, in milligrams per single serving of total THC (THC + [THCA x 0.877]) content[, and any other marketed phytocannabinoids];

- (2) [if terpenes are marketed, a terpene profile;
- (3) ]in [**bold,** ]milligrams per total package of total THC (THC + [THCA x 0.877]) [and total CBD (CBD x 877)]content;
- (3[4]) the amount of total THC (THC + [THCA x 0.877]) [and any other marketed phytocannabinoids ]as a percentage of weight or volume, except if the cannabis product is in the form of an edible;
- (4) in milligrams per single serving of total CBD (CBD + [CBDA x 0.877]) content;
- (5) in milligrams per total package of total CBD (CBD + [CBDA x 0.877]) content;
- (6) in milligrams per single serving of any other marketed phytocannabinoids;
- (7) the amount of any other marketed phytocannabinoids as a percentage of weight or volume, except if the cannabis product is in the form of an edible;
- (8[5]) number of servings per package[ and, if applicable, the recommended size of a serving], except for cannabis flower and other forms of cannabis for vaporization;[ and]
- (9) the recommended size of a serving, except for cannabis flower and other forms of cannabis for vaporization; and

(10[6]) the net quantity[weight] of the cannabis product.

**Paragraph (1) of subdivision (b) of Section 128.5 is amended to read as follows:**

(1) a list of all active and inactive ingredients, including but not limited to single ingredient cannabis products such as whole cannabis flower, in descending order of predominance by weight in the cannabis product[ -- both active and inactive]. The ingredient list shall include and separately list[, in bold,] any major allergens set forth in the Food Allergen Labeling and Consumer Protection Act of 2004, Title 21, as it relates to Food and Drugs, of the U.S. Code section 343, for misbranded food;

**Subparagraph (i) of paragraph (1) of subdivision (b) of section 128.5 is amended to read as follows:**

(i) Except for tablets and capsules without any food ingredients, micronutrient, or herbal supplements, [E]edibles shall include a nutritional label pursuant to Title 21, as it relates Food and Drugs, of the Codes of Federal Regulations section 101.9(c) for nutrition labeling of food, as amended from time to time; and

(ii) Except for tablets and capsules without any micronutrients or herbal supplements, [C]cannabis products marketed as dietary supplements shall include a supplement fact panel pursuant to Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section 101.36 for nutrition labeling of dietary supplements, as amended from time to time;

**Paragraph (4) of subdivision (b) of Section 128.5 is repealed and paragraph (5) through (10) is renumbered to paragraphs (4) through (9).**

**Newly renumbered paragraph (5) of subdivision (b) of Section 128.5 is amended to read as follows:**

(5) name, location (at a minimum, city or zip code), license number, and direct contact information of the processor;

**Newly renumbered paragraph (7) of subdivision (b) of Section 128.5 is amended to read as follows:**

(7) clear usage instructions, except for cannabis products intended for inhalation;

**Newly renumbered paragraph (9) of subdivision (b) of Section 128.5 is amended to read as follows:**

(9) a scannable bar code or QR code linked to a downloadable certificate of analysis or linked to a website where the certificate of analysis can be downloaded;[ and]

**Paragraph (11) of subdivision (b) of Section 128.5 is renumbered to paragraph (12) and a new paragraph (10) is added to read as follows:**

(10) if terpenes are marketed, a terpene profile; and

**Subdivision (c) of Section 128.5 is amended to read as follows:**

(c) Required labeling shall be no smaller than 6-point font size. [Labeling text]All content required by this Part shall be clearly written or printed and in the English language using text that contrasts from the background. In addition to the required labeling in English, licensees may include accurate foreign language translation(s) of the labeling text, provided such translation otherwise complies with this Part.

**Subdivision (e) of Section 128.5 is amended to read as follows:**

(e) The information required pursuant to Section 128.5(a) of this Part shall be unobstructed and conspicuous. A licensee must[ay] include the information required pursuant to Section 128.5(a) of this Part by printing it directly onto the retail package or by affixing multiple labels with the information to the retail package, provided that none of the information is obstructed.

**Subdivision (f) of Section 128.5 is amended to read as follows:**

(f) The retail package[ing] or, if it is used, the marketing layer shall contain the following warnings, provided however, if the word “warning” is clearly associated with all warnings as a header then the word “warning” does not need to be included in the individual warnings where specifically indicated below:

**Paragraph (2) of subdivision (f) of Section 128.5 is amended to read as follows:**

(2) “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by adults[persons] 21 [years ]and older”;

**Subdivision (g) of Section 128.5 is repealed and subdivision (h) of Section 128.5 is renumbered to subdivision (g) and amended to read as follows:**

(g[h]) In addition to the required warnings in Section 128.5(f) of this Part, the retail package[ing] or marketing layer shall include any one of the following rotating health warnings as determined by the Office:[.]

(1) “Cannabis can be addictive.”;

(2) “Cannabis can impair concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis.”;

(3) “There may be health risks associated with consumption of this product.”; or

(4) Other warnings as determined by the Office.

**A new subdivision (h) of section 128.5 is added to read as follows:**

(h) The warnings required pursuant to Section 128.5(f) and Section 128.5(g) of this Part shall be displayed:

(1) at a minimum in the English language;

(2) in Times New Roman, Calibri, Arial, or Helvetica; and

(3) in text no smaller than size six (6) font.

**Subdivision (i) of Section 128.5 is amended to read as follows:**

(i) To allow for labeling on small packaging, the information required pursuant to sections 128.5(b), (f), and (g[h]) of this Part may appear on labels that are, not by means of limitation: accordion, booklet, dry release, expandable, extendable, or peel-and-reseal. This allowance does not apply to:

**Subparagraph (ii) of paragraph (3) of subdivision (i) of section 128.5 is amended to read as follows:**

(ii) In all capital letters as indicated: “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by [persons]adults 21 [years ]and older”.

**Subdivision (j) of Section 128.5 is amended to read as follows:**

(j) Any research licensee conducting research approved by the Office involving human subjects shall comply with all packaging and labeling requirements, unless the licensee has received[s prior written approval for] a waiver approved by the Office of specific packaging or labeling requirements in connection with any research approved by the Office. The waiver may extend to a licensee providing cannabis products for an approved research study.

**Section 128.6 is amended to read as follows:**

(a) No cannabis product package, including an exit package, shall display any content or be labeled in any manner that:

(1) is attractive to individuals under twenty-one as defined in subsection 128.1(c) of this Part;

(2) includes any false or misleading statements, images, or other content;

(3) includes[ing but not limited to,] any health claims;

([3]4) includes the term “organic”, or any similar term, unless describing [the] a cannabis product’s ingredients and in compliance with Title 7, as it relates to Agriculture, of the Codes of Federal Regulations sections 205.600 to 205.607 (sections 205.608-205.619 [Reserved]), regarding the USDA National list of Allowed and Prohibited Substances, such that the product contains at least 70 percent certified organic ingredients (not including salt or water);

([4]5) includes the term “craft”, or any similar term, unless the processor is designated by the Office as processing a craft product[s] pursuant to Part 118 of this Title;

([5]6) includes the term “gluten-free”, or any similar term, unless the product meets the term as defined in Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section 101.91;

([6]7) includes the term “vegan”, or any similar term, unless the product contains no animal products;

[(7]8) includes the term “kosher”, or any similar term, unless the product is packaged and labeled in compliance with section 201-a of the Agriculture and Markets Law;

[(8]9) causes a reasonable consumer confusion as to whether the cannabis product is trademarked, marked, or labeled in a manner that violates any federal trademark law or regulation;

[(9]10) portrays cannabis or cannabis products as being authorized under or part of Article 3 or Article 5 of the Cannabis Law;

[(10) depicts cannabis products or paraphernalia; ]

(11) promotes overconsumption;

[(12) promotes price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the Office;]

(12[3]) includes a special branding material, unless the use of such special branding material is authorized by the Office and complies with this Part;[ or]

(13) is tamper-evident in a manner that obstructs any required labeling set forth in Part 128.2;

or

(14) violates any other prohibitions as set out by the Office.

**The title for Section 128.7 is amended to read as follows:**

**§ 128.7 [Retail ]Packaging and Labeling Violations and Penalties.**

**Subdivision (a) of Section 128.7 is amended to read as follows:**

(a) The Board may suspend, cancel, or revoke a license, registration, or permit and impose any other penalties as authorized by Subchapter J of this Title and the Cannabis Law for the following violations:

**Subdivision (b) of Section 128.7 is amended to read as follows:**

(b) If a licensee authorized to sell cannabis products to consumers receives a cannabis product that is not packaged or labeled in accordance with this Part and the licensee receives appropriate notification of the noncompliance from the Office, a consumer, or the licensee which processed or distributed the cannabis product, then the licensee shall immediately notify the Office and return the cannabis product to the licensee who transferred the product to the licensee. In the event the cannabis product is packaged according to this Part but is not labeled according to Part 128, the processor may correct the labeling by adding only the information required to make the labeling compliant. Such allowance does not prevent the Office from implementing any civil penalties or actions, temporary or otherwise, against the processor in the interest of public health and safety.

**A new Section 128.10 is added to read as follows:**

**§ 128.10 Effective Date.**

(a) The provisions of this Part are effective upon filing for publication in the State Register.

(b) Notwithstanding subdivision (a) of this section, cannabis products sold in New York must meet the requirements set forth in this Part within six months of adoption of regulations.

**Section 129.2 is amended to read as follows:**

(a) A licensee may use its brand on labeling, interior signs, advertising, advertisements, and other materials subject to Parts 128 and [this Part]129 of this Title.

(b) A licensee may engage in reasonable marketing and advertising practices that are not otherwise prohibited in this Part, provided the marketing, advertising, and any advertisements are not attractive to individuals under twenty-one, as defined in subsection 128.1(c), do not promote or depict the use of cannabis products by individuals under twenty-one, and do not otherwise jeopardize public health or safety[, promote youth use, or be attractive to individuals under twenty-one].

(c) Any advertising or advertisement [shall], except for brand representatives and cannabis merchandise, unless otherwise [approved]exempted by the Office, shall include a required warning that depends on that advertising or advertisement's form:

(1) if the advertising or advertisement contains only visual elements or a combination of audio and visual elements, then the following statements shall be included in a conspicuous manner on the face of the advertising or advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement:

“For use only by adults 21[ years of age] and older. Keep out of reach of children and pets. If someone[n case of] accidentally [ingestion or over] consum[ption] es cannabis, contact the Poison Center[at 1-800-222-1222 or call 9-1-1]. [Please c] Consume responsibly.”;

(2) if the advertising or advertisement contains only auditory elements, then the following statements shall be clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement:

“For use only by adults 21 and older. Keep out of reach of children and pets. I[n case o]f someone accidentally[ingestion or over ] consum[ption] es cannabis, contact the Poison Center. Consume responsibly.”

(d) Any advertising or advertisement, except for brand representatives and cannabis merchandise, unless otherwise [approved] exempted by the Office, shall include one of the following warnings in a rotating manner as directed by the Office, in their entirety in a conspicuous manner on the face of the advertising or advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement:

DRAFT

- (1) "Cannabis can be addictive.";
  - (2) "Cannabis can impair concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis.";
  - (3) "There may be health risks associated with consumption of this product.";
  - (4) "Cannabis is not recommended for use by persons who are pregnant or nursing."; or
  - (5) Other warnings as determined by the Office.
- (e) Warnings pursuant to sections 129.2(c) and 129.2(d) of this Part shall be displayed as follows if printed or otherwise written on the advertising or advertisement:
- (1) in the same language as the advertising or advertisement;
  - (2) in Times New Roman, Calibri, Arial, or Helvetica;
  - (3) in text no smaller than size 6 font;
  - (4) **[bolded]in text that is easily legible and contrasts sufficiently from the background and other text on the advertisement or marketing;**

(5) be [legible, ]unobscured[, ] and visible to the consumer; and

(6) in a bright yellow text box so as to stand out from the surrounding advertising or advertisement. [ The use of a bright yellow color for the warning shall not render the advertisement attractive to individuals under twenty-one as prohibited by Section 129.3 of this Part.] If the surrounding advertising or advertisement is yellow in color, the text box shall be offset with a distinctive border so as to differentiate it from the surrounding advertising or advertisement.

(f) Any [licensee]advertising or advertisement, except for brand representatives and cannabis merchandise, unless otherwise exempted by the Office, shall include the New York State HOPEline phone number, text number, and website or QR code on any advertising or advertisement, or other future iteration of New York State’s gambling and substance use disorder resource helpline[, unless otherwise approved by the Office].

(g) A licensee shall only advertise by means of print publications, television, radio, print[, internet, mobile applications, social] media, or other electronic communications, [or other print publication, unless the advertisement is an outdoor sign pursuant to Section 129.4(a) of this Part,] if the [licensee has reliable evidence that at least 90%, unless otherwise determined by the Office, or the]audience [for the advertisement is reasonably expected to be twenty-one years of age or older ]is comprised of a proportion of individuals age 21 and older that meets or exceeds the proportion of the state’s population that is 21 and older based upon the most recently available data from the U.S. Census Bureau’s Annual Estimates of the Resident Population. The

burden of proof of the audience composition lies with the licensee. This requirement does not apply to advertising and advertisements that can only be viewed or heard solely from within the licensed or permitted premises of a licensed cannabis retailer.

(h) A licensee shall maintain records and documentation to establish that its advertising, advertisements, and marketing meet the requirements of this Part.

(i) A licensee may sponsor a charitable, sports, or similar event provided however, a licensee shall not advertise at, or in connection with, such an event unless:

(1) any advertisements are limited to[consist only], at a maximum, [of ]the licensee's logo and trademark and the following [text]information:

(i) [the ]licensee's name, entity name, or doing business as name;

(ii) if the licensee is authorized to conduct retail sales, the retail dispensary's address; [the licensee's website URL, email address, and phone number;]

(iii) licensee's phone number, email address, and website URL; [the nature of the business; and]

(iv) if the licensee is authorized to conduct retail sales, directions to the business[the retail dispensary's location]; and

(v) the licensed activity;

(2) advertising, advertisements, and marketing at eligible events shall comply with this Part.

(j) A licensee shall limit the apparel displaying its brand and trademark used in connection with the sale of apparel displaying its brand to only adult sizes. Such apparel shall only be sold [by the] from a licensee at its own licensed premises or as otherwise authorized within this Title. The universal symbol as determined in Part 128.5(b)([7]6) of this Title cannot be used in branded apparel.

(k) A licensee shall accurately and legibly include its name and license number in all advertising and advertisements[for its products], unless the form of the advertising or advertisement has been exempted from this requirement by the Office. This requirement does not apply to brand representatives or cannabis merchandise; however, if using a brand representative, licensees must provide a license number upon request.

(l) A licensee who advertises via a website or digital application shall have a mechanism designed to keep those under the age of twenty-one from visiting the website or digital application.

(m) A licensee advertising on any social media platform shall include the following information clearly visible on the profile page of the social media account, unless otherwise restricted by the social media platform advertising standards, guidelines, policies, or terms:

(i) text stating that cannabis products are legal only for adults twenty-one years of age or older;

(ii) the licensee's name, entity name, or doing business as name;

(iii) the license or permit number of the licensee; and

(iv) any other information as requested by the Office.

(n) A licensee advertising on any social media platform or digital application shall disseminate social media advertising or advertisements only to user accounts where the user is age twenty-one or older.

(o[m]) A licensee who has entered into an intellectual property licensing agreement, marketing or advertising agreement or any other agreement in which a licensee authorizes the use of its intellectual property, or allows a third party to market or advertise on its behalf, the licensee is responsible to ensure that such agreement [,] or intellectual property use[marketing or advertising] shall comply with Part 128 and this Part of this Title.

(p) Any advertising or advertisement delivered via mail is only allowed if the recipient is an adult twenty-one years of age or older. Such mail must be enclosed in a plain, opaque envelope or other covering of the advertising or advertisement’s content to minimize exposure to individuals under twenty-one.

(q) A licensee may advertise through price reductions or any other discount, coupons, points-based reward systems, customer loyalty programs, or “buy-one-get-one” offers provided that:

(i) such offers do not result in the sale of cannabis products below market value or subvert state and local tax collections;

(ii) if not within a licensed or permitted premises the advertising or advertisement of such offers is in the form of an electronic communication, mailer, or via a licensee’s website where the intended audience is adults twenty-one years of age and over; and

(iii) the advertising or advertisement of such offers is not adhered or affixed to a cannabis product package or label.

(r[n]) Licensees shall comply with additional requirements as set out by the Office.

(s) A licensee may advertise to consumers through free cannabis merchandise provided that it does not result in providing any free cannabis merchandise to an individual under twenty-one years of age and that branded free cannabis merchandise adheres to retail advertising specialties

limits and requirements pursuant to Part 124.1(i) of this Title, or otherwise approved by the Office;

(i) The provision of branded free cannabis merchandise as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title is exempt from the retail advertising specialties limits and requirements pursuant to Part 124.1(i).

**Section 129.3 is amended to read as follows:**

(a) No marketing, advertising, or advertisement shall:

(1) depict cannabis products not compliant with Part 128 of this Title;

[2) use or display images designed in any manner to be attractive to individuals under twenty-one (21);

(3) use audio that may be attractive to individuals under twenty-one, including but not limited to using children's voices or cartoon voices;]

[2[4)] be on or in the form of a billboard or outdoor sign, unless otherwise allowed pursuant to Section 129.4 of this Part;

[3[5)] use or display[ colloquial references to cannabis or depictions of cannabis, cannabis products, paraphernalia, or] the imagery[or ], action, or sound of smoking or vaping[, including

but not limited to the words “stoner”, “chronic”, “weed”, “pot”, or “sticky buds,” unless such reference is used in the licensee’s name, entity name, doing business as name, or logo];

(4[6]) be false or misleading;[, including ]

(5) \_\_make[ing] any health claims or[ a] represent[ation] that use of cannabis has curative or therapeutic effects;

(6[7]) promote overconsumption or rapid consumption;

(7[8]) promote product potency or THC concentration;

[(9) promote price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the Office;]

(8[10]) falsely portray cannabis or cannabis products as being in compliance with Article 3 and Article 5 of the Cannabis Law;

(9[11]) assert that cannabis or cannabis products are safe because they are regulated by the Board or Office;

(10[2]) use the term “organic”, or any similar term, unless describing a cannabis product’s ingredients and in compliance with Title 7, as it relates to Agriculture, of the Codes of Federal Regulations sections 205.600 to 205.607 (sections 205.608-205.619 [Reserved]), regarding the USDA National list of Allowed and Prohibited Substances, such that the product contains at least 70 percent certified organic ingredients (not including salt or water);

(11[3]) use the term “craft”, or any similar term, unless describing a cannabis product made by a processor designated by the Office as processing craft products pursuant to Part 118 of this Title;

(12[4]) use the term “gluten-free”, or any similar term, unless the product meets the term as defined in Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section §101.91;

(13[5]) use the term “vegan”, or any similar term, unless describing a cannabis product containing no animal products;

(14[6]) use the term “kosher”, or any similar term, unless describing a cannabis product packaged and labeled in compliance with section 201-a of the Agriculture and Markets Law;

(15[7]) contain any obscene or indecent statement, design, or representation, picture, or illustration;

(16[8]) be within or be[readily] observed within 500 feet of an elementary or secondary school grounds as defined in Education Law, recreation center or facility, childcare center, playground, public park, or library, or in an area that is in violation of any federal, state, or local laws or regulations;

(17[9]) disparage the cannabis or cannabis products of another business;

(18[20]) encourage the transportation of cannabis across state lines or otherwise encourage illegal activity;

[(21) be on or through handbills that are passed out in public areas including, but not limited to, parking lots and publicly owned property;]

(19[22]) include medical symbols that might reasonably lead a consumer to think the product is a medical product unless that product is a medical cannabis product sold by a registered organization pursuant to Part 113;

(20[3]) utilize unsolicited pop-up or banner advertising on the internet or digital applications other than on age-restricted websites or digital applications for [people] adults twenty-one and over who consent to view cannabis-related material;

[(24) produce any items for sale or promotional gifts, such as T-shirts or novelty items, bearing a symbol of or references to cannabis. This prohibition shall not pertain to cannabis

paraphernalia sold to consumers;]

(21[5]) advertise through[ free promotional items including, but not limited to, gifts,] giveaways of cannabis products[, discounts, points-based reward systems, customer loyalty programs, coupons,] and "free" or "donated" of cannabis products[, except for: the provision of branded exit packages by a licensee for the benefit of customers after a retail purchase is completed, the provision of free promotional items as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title, or otherwise approved by the Office];

[(26) use a commercial mascot;]

(22[7]) include a special branding material, unless use of that special branding material is authorized and complies with this Part; or

(23[8]) violate additional prohibitions determined by the Board or Office.

(b) A licensee shall not permit the use of their trademarks[, or branding[s, names, locations, or other distinguishing characteristics] for third-party use on advertising in a manner that does not comply with this Part or any other statute, rule, or regulation.

**Section 129.4 is amended to read as follows:**

(a) Only licensees authorized to conduct retail sales or delivery to consumers may use [advertise ]outdoor[s using] signs and billboards provided such signs:

(1) are informational only and for the purpose of alerting individuals to the name and/or location of a licensed retailer [dispensary ]authorized to sell cannabis products to consumers, unless otherwise specified in this section;

(2) are limited to, at a maximum, the licensee's logo and the following information:

(i) licensee's name, entity name, or doing business as name;

(ii) dispensary address, if any, and licensee phone number, email address, and website URL;[ and]

(iii) directions to [nature of] the business; and

(iv) the licensed activity;

(3) are not attractive to individuals under twenty-one as defined in subsection 128.1(c)[are affixed to a building or permanent structure];

(4) are not on vehicles, except for licensee's vehicles that are required to contain certain identifying information in order to comply with other laws or regulations;[ and]

(5) are in compliance with all federal, state, and local rules and regulations; [do not total more than two in number per licensed premises.]

(6) are in compliance with Parts 128 and 129;

(7) must be affixed to the licensed physical brick and mortar store; or

(8) outdoor signs or billboards that are not affixed to the licensed physical brick and mortar store are limited to:

(i) three (3) in number;

(ii) must meet all distance requirements per Section 86(2)(e) of the Cannabis Law;

(b) [Marketing or advertising is prohibited on any s] Signs, billboards, and placards are prohibited, regardless of their size or purpose, in arenas, stadiums, other sport venues, shopping malls (unless alerting individuals to the location of a retail dispensary located within that mall), fairs that receive state allocations, and video game arcades, regardless of whether any of the foregoing are open air or enclosed, provided, however, if the event or facility uses an employee or agent of the event or facility, or other controlled security access that will restrict access to only individuals twenty-one years of age and older then this provision shall not apply[but this does not include any such sign or placard located at an adult-only facility or as further set out by the Office in guidance].

(c) A licensee shall remove the outdoor sign or billboard if the Office determines the outdoor sign or billboard violates the provisions of Cannabis Law and this Part or if the licensee fails to provide records to the Office upon request that establishes the outdoor sign or billboard meets the requirements of Cannabis Law and this Part.

(d) Outdoor signs and billboards shall comply with Part 119 of this Title and any additional requirements as set out by the Office.

**The title for Section 129.5 is amended to read as follows:**

**§ 129.5 Adult-Use Marketing, [and ]Advertising, Outdoor Signs, and Billboards Violations and Penalties.**

**Subdivision (a) of Section 129.5 is amended to read as follows:**

(a) A licensee shall immediately remove or discontinue the marketing, advertising, advertisements, outdoor signs, or billboards if the [Board] Office determines the marketing, [ or] advertising, advertisements, outdoor signs, or billboards violate[s] the provisions of Cannabis Law and this Part or if the licensee fails to provide records to the Office upon request that establishes the marketing or advertising meets the requirements of Cannabis Law and this Part.

**Subdivision (c) of Section 129.5 is amended to read as follows:**

(c) The Office may take any action against any licensee who fails to comply with this Part, including but not limited to [recommendations to the Board for] suspension, cancellation, or

DRAFT

revocation of a license, imposition of any fees or fines, requiring a licensee to cease by a date determined by the Office the non-compliant marketing, [ and] advertising, advertisement, outdoor sign, and billboard and requiring removal by a date determined by the Office of any advertising, advertisement, outdoor sign, or billboard still being published or displayed, and any other penalties set forth in Cannabis Law and Part 133 of this Title.